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Zoning Commission of the District of Columbia
441 Fourth St. NW
Washington, DC 20001

**Re: Zoning Commission Case No. 00-01
(Yale Laundry Proposed Hotel)**

February 11, 2000

Dear Members of the Zoning Commission,

I am writing to call your attention to fundamental problems associated with Zoning Commission Case No. 01-00, a proposed hotel development under Large Tract Review and proposed subdivision, on the site of the historic Yale Steam Laundry on New York Avenue.

Many residents in Square 514 are concerned about this case, which has exposed zoning problems that threaten the Mt. Vernon Square neighborhood and its new, designated National Register Historic District.

Zoning Commission Case No. 00-01 seeks air rights development over a public alley connecting two of the towers in the proposed Yale Laundry development within Square 514. However, Z.C. Case No. 00-01 brings to light several fundamental zoning problems that should be addressed by the Commission prior to review of the Public Space issue. Failure to address the underlying zoning matters prior to deciding the public space issue could limit the Commission's options to address the more critical zoning issues involved in the case.

Background

- The proposed development in Z.C. Case No. 00-01 would introduce 130-foot commercial towers into a residential square predominated by 42-foot average height rowhouses in the Mt. Vernon Square North Housing Priority Area.
- The proposed hotel would eliminate hundreds of potential housing units in the square required by the underlying zoning.
- The proposed hotel threatens the potential for housing in the NoMa triangle by introducing an intense commercial use in the area and increasing land values where housing is planned, zoned and desired by the community and envisioned in the Comprehensive Plan.

ZONING COMMISSION
District of Columbia
CASE No. 00-01
EXHIBIT NO. 13
EXHIBIT No. 13

CEB
2/10/00

De Facto Zoning Change by the Zoning Administrator

The first problem involving Case No. 00-01 is that Zoning Commission authority was usurped by the Zoning Administrator, who issued a decision on September 25, 1998 effectively waiving DCMR Section 1707.3 on behalf of the applicant (attachment).

DCMR Section 1707.3 states that “landmark sites within in the DD District are governed by the underlying zones and the special use requirements and incentives provided in Sections 1703 through 1706 of this chapter.”

The Yale Laundry site sits in a Housing Priority Area of the Downtown Development District (DDD) as defined in Title 11, Section 1706.8 of the District of Columbia Municipal Regulations. One of the stated objectives of the DDD is “to create the greatest concentration of housing in the Mt. Vernon Square area.” (DCMR Title 11, Section 1706.1) As such, the C-2-C/DD zoning includes a residential requirement, defined as “no less than 4.5 FAR of residential use.” (Section 1706.4 (b)) In other words, development on the Yale Laundry historic site should include at least 4.5 FAR of housing – a potential of hundreds of units. Despite this clear instruction in D.C. law, the Applicant sought a waiver of the housing requirement through a non-public process involving the Zoning Administrator at the Department of Consumer and Regulatory Affairs. The Applicant claimed to be exempt from the housing requirement based on the landmark status of the Yale Laundry buildings and surrounding lots.

DCMR Title 11, Section 1706.20 specifically lists squares and lots that are exempt from the Downtown Development District residential requirement. Square 514, in which the Yale Laundry sits, is not on the list. On the contrary, Section 1707.3 states that “Uses within buildings in the historic districts and landmark sites within in the DD District are governed by the underlying zones and the special use requirements and incentives provided in Sections 1703 through 1706 of this chapter.” The Zoning Administrator went beyond the statute to grant the exemption.

This misuse of authority and effective zoning change will be challenged through the Board of Zoning Adjustment, with the recommendation that the matter return to the proper forum for adjudication: the Zoning Commission.

- The Zoning Commission should decide whether the properties named in Zoning Commission Case No. 00-01 are exempt from current zoning requirements (i.e. determine requirements of use) before deciding whether Public Space utilization to connect two of the lots in question is appropriate.

Broader Effects of the Zoning Administrator’s *De Facto* Zoning Change

The Applicant has asserted that large tracts of vacant land on both sides of the Yale Laundry – comprising an area at least twice as large as the Yale Laundry buildings themselves – are part of the landmark, thus expanding the alleged exemption from the housing requirement to an area totally over 46,000 square feet.

The Applicant filed an application February 8, 2000 for subdivision of Lots 6, 67, 68, 73 and 74 in Square 514 – which would add more *vacant* acreage to the historic landmark designation and further increase the land exempted from the housing requirements in the Zoning Code (attachment).

This conflicts with the goals and objectives of the Downtown Development District as well as the language in Title 11.

- The size of the lots in question increases the significance and impact on the DDD of the Zoning Commission's determination on this matter.

Zoning Conflict Creates Problem

Zoning Commission Case No. 00-01 brings to light a fundamental problem in the zoning code governing the DDD that should be addressed at the earliest opportunity: an unprecedented height incongruity that threatens significant historic residential zones. While the C-2-C/DDD zoning carries a 6.0 FAR, 90-foot height limitation, Title 11, Section 1701.7 permits buildings on New York Avenue, by virtue of the Building Height Act, to reach heights of 130 feet, the maximum allowable in the District. In Square 514 of the Mt. Vernon Square Housing Priority Area, for example, this means that the residential rowhouses in the northern half of the Square, averaging heights of approximately 42 feet, stand to be dwarfed by allowable 130-foot towers next to them. The buffer between this radical height differential is a narrow alley. In other words, there is no buffer. Under the current code, 130-foot towers effectively slam into fragile, historic rowhouses.

The intent – if not one of the fundamental purposes – of the Comprehensive Plan and the Zoning Ordinance is to avoid these stark contrasts in height. The disparity in height that would be permitted in Square 514 – and perhaps numerous squares in the DDD – would be unprecedented in the District.

Before any damage is done to goals and objectives clearly outlined in the Comprehensive Plan and the Downtown Development District overlay, the Zoning Commission should address this apparently unintended zoning conflict.

Possible Remedy in Section 1701.7

One possible remedy to this problem is to make a simple change in Section 1701.7, governing building height in the Downtown Development District. The measure covers residential and mixed-use areas that the DDD seeks to protect and enhance:

Except in the underlying R-5-B, R-5-E, C-2- A, and C-3-A Districts, the maximum permitted building height shall be that permitted by the Act to Regulate the Height of Buildings, June 1, 1910, as amended; Provided, that a building that fronts on Massachusetts Avenue or on Mount Vernon Square shall be designed and built so that no part of the building shall project above a plane drawn at a

forty-five degree angle from a line located one hundred ten feet (110 ft.) above the property line abutting Massachusetts Avenue or Mount Vernon Square.

C-2-C could be added to this list. This would protect residential and mixed-use areas in the downtown from the most intense heights allowable in the District, yet continue to permit high density development.

Other remedies may be possible, as well.

Zoning Commission Should Consider Fundamental Issues First

Clearly, there are fundamental issues of zoning involving the goals and objectives of the DDD that should be resolved by the Zoning Commission before the narrow issue in Z.C. Case No. 00-01 is decided. If the Zoning Commission considers Z.C. Case No. 00-01 prior to and apart from the issues described above, the Commission may limit its ability to decide fundamental issues that are critical to the future of the Mt. Vernon Square area and the DDD.

Consideration of the C-2-C buffer issue is appropriate given the Zoning Commission's review of housing requirements in the DDD overlay. As the D.C. Office of Planning makes recommendations to enhance the goals and objectives related to the DDD, fundamental zoning issues should be considered as part of this overall review. Minor decisions that could hamper imminent broader reviews and decisions by the Zoning Commission should be avoided.

The Zoning Commission would be well advised to:

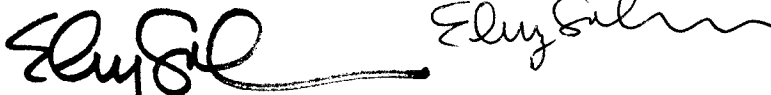
1) Delay consideration of Case No. 00-01 until critical fundamental issues are resolved.

or

2) Set down a joint hearing in which Z.C. Case No. 00-01 is considered as well as new language which would add C-2-C to the list of underlying zones in Section 1701.7 to protect fragile downtown areas in the DDD.

Thank you very much for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Elizabeth Solomon', with a long horizontal flourish extending to the right.

Elizabeth Solomon

Attachments

CC: Andrew Altman, Director, Office of Planning

Dr. Omer Abdusalem, Office of Mayor Anthony Williams

Board of Zoning Adjustment

Lloyd Jordan, Director, Department of Consumer and Regulatory Affairs

Steven Raiche, Division Chief, Historic Preservation Division, DCRA

Members of ANC Commission 2C

J. Kirkwood White, Committee of 100 on the Federal City

Deering "Tip" Kendrick, President, Mt. Vernon Square Neighborhood Assoc

September 25, 1998

MEMORANDUM

TO: Armando Lourenco and Gladys Hicks, Department of Consumer and Regulatory Affairs

Cc: David Colby, Office of Planning
David Maloney, Historic Preservation Division

FROM: Nathan W. Gross, Arnold & Porter
David W. Briggs and Robin Hayes, Holland & Knight

RE: Historic Preservation Regulations, Downtown Development District (DDD)

Request. We request your determination that a historic landmark covered by the provisions of Section 1707 of the Zoning Regulations, but located outside the area described in Section 1707.4 is also entitled to the exemption under the provisions of Section 1706.20 (related to residential uses) if the landmark is located in a Housing Priority Area.

Issue. The Historic Preservation provisions in §1707 of the Downtown Development District (DDD), and related residential provisions in §1706, contain some ambiguities or inconsistencies with regard to historic landmarks. In particular, several subsections in the DDD refer only to a contiguous area described by squares and lots in §1707.4, which properties constitute a listing of both individual landmarks, contributing historic buildings within the Downtown Historic District and the Pennsylvania Avenue Historic Site and associated land. There are a number of historic landmarks within the DDD boundaries which are not listed in §1707.4 and which could be subject to different rules if some provisions of the DDD text are read too literally.

Subsection 1707.2 and other provisions make references to historic landmarks generically, and the government agencies have generally interpreted the historic preservation rules to apply to both "listed" landmarks and "unlisted" landmarks.

This memorandum seeks confirmation that the normal waiver of the residential requirement for historic buildings applies to historic landmarks not located in the area described in §1707.4 on an equal footing with contributing buildings and landmarks that are located in the area described. With new development and renovations moving rapidly

northward and eastward in the Downtown (East End), where many of these landmarks are located and where the Housing Priority Area of the DDD is mapped, it will be important for the rules to be clear.

Adopted Zoning Rules for Historic Buildings. In summary, the DDD provides the following zoning restrictions and incentives regarding historic properties:

- Properties located within the area described in §1707.4 are restricted to a maximum on-site density of 6.0 FAR;
- Transferable development rights (TDRs) are provided for unbuilt density of up to 4.0 FAR on the lot accommodating the historic building (§1707.5(d)); and
- Historic buildings in a Housing Priority Area are not subject to a housing requirement if located within the area described in §1707.4 (§1706.20).

We are raising an issue only with the third regulation above, the required residential component in the Housing Priority Area.

Applicable Properties. Subsection 1707.4 describes by lots and squares an area of the DDD containing both contributing historic buildings and historic landmarks. All of these properties are clearly subject to the restrictions and incentives of the DDD affecting historic properties. These properties are either located within the Downtown Historic District or the Pennsylvania Avenue Historic Site. These properties and historic districts were the focus of testimony and analysis in Zoning Commission Case No. 89-25 (Downtown Development District), because the D.C. Preservation League had petitioned to include the entirety of the Downtown Historic District within the purview of special zoning controls. The applicable parts of the Pennsylvania Avenue Historic Site were added to the list in §1707.4 in the interest of uniform treatment. It was also the clear intent of the Zoning Commission, the Office of Planning and the Historic Preservation Division to treat other historic landmarks in DDD in a consistent manner, but the rules as written contain some ambiguities, discussed below.

Legislative Intent. It is clear from numerous provisions in §1707 that the Zoning Commission and participating government agencies intended all historic buildings to be governed consistently by the historic preservation rules in DDD, as indicated below (with emphasis added):

1707.3 The provisions of this section apply to historic landmarks and to specified properties within the Downtown Historic District and Pennsylvania Avenue Historic Site.

It is clear from this wording that all landmarks, including those within and outside the historic districts, were intended to be governed by §1707. This is the first substantive provision in §1707, following immediately after the purposes stated in §1707.1, which suggests that this statement should govern the following rules in a general, over-arching way.

The immediately following subsection relates to uses within historic buildings and, again, clearly expresses the broad intent of governing historic buildings both within and outside of the two historic districts:

1707.3 Uses within buildings in the historic districts and landmark sites within the DD District are governed by the underlying zones and the special use requirements . .

Additional indications of the legislative intent to treat historic landmarks and contributing buildings equally in the DDD zoning provisions are found in the formal purposes as set forth in §1707.1:

Paragraph (a) makes broad reference to preserving the unique character and fabric of historic buildings, the Downtown Historic District, and the Pennsylvania Avenue Historic Site.

The above is a clear statement of these included categories, including historic buildings generally, and those within the Downtown Historic District and the Pennsylvania Avenue Historic Districts.

Paragraph (b) refers both to historic landmarks and contributing buildings: *(b) Encourage restoration and adaptive reuse of historic landmarks and adaptive reuse of contributing buildings in historic districts, together with compatible alterations and compatible new construction.*

Paragraph (c) states the intent of restricting permitted building bulk on critical historic frontages and lots with historic buildings so as to encourage preservation of historic buildings and assure a compatible scale of new construction in historic districts, especially in projects combining new development with preservation.

Other relevant text in Paragraphs (d) through (f) refers to "historic buildings" broadly, clearly indicating the legislative intent to include all historic buildings in the DDD.

Finally, the provisions for transferable development rights in §1707.5 in several places carefully include historic landmarks outside of the §1707.4 area as being eligible for TDRs. One example is as follows:

1707.5 (b) The property (that is eligible to transfer TDRs) shall be one of those properties identified in 1707.4 and accordingly restricted in on-site density to 6.0 FAR or shall be an historic landmark that has an FAR of 6.0 or less including any existing or proposed additions.

Waiver of the Residential Requirement for Historic Landmarks. Despite the Commission's clear intent to treat all historic properties by the same rules, a discrepancy exists regarding the waiver from a required residential component as provided in §1706.20. Given the legislative intent of the DDD zone to provide incentives and

protections for historic buildings generally, and specific regulations accomplishing that intent, a uniform treatment regarding the residential waiver would be logical and consistent.

Historic buildings within the §1707.4 area are exempted from any residential use requirements for policy reasons. Specifically, given the density restrictions and the (typically) limited profitability of residential uses, the Zoning Commission and the executive agencies decided to allow all-commercial use, as well as transferable development rights, to help defray the relatively high cost of restoring historic buildings. Another important reason for the waiver is that many historic buildings may not lend themselves reasonably to conversion for residential use because of the character or design of the building.

The provision that creates a potential problem is §1706.20 within §1706 "Residential and Mixed Use" provisions, as follows:

1706.20 The residential requirements shall not apply to any lot restricted to a maximum development of 6.0 FAR pursuant to 1707.4.

A narrow reading of this rule would mean that any individual landmark located within the Housing Priority Area and not within the area described in §1707.4 would have a residential requirement of 4.5 FAR in DD/C-3-C districts, 3.5 FAR in DD/C-3-C districts and 2.0 FAR in DD/C-4 districts. The 4.5 FAR, in particular, exceeds the existing density of the majority of applicable landmarks and clearly appears to be contrary to sound historic preservation practices -- in terms of mandatory density, mandatory and potentially inappropriate use of the historic building, and reduced financial viability to support high-quality historic restoration of the landmark building.

Affected Historic Landmarks: A moderate, but significant, number of historic landmarks are potentially affected by this interpretation question. The historic landmarks outside of the area defined in §1707.4 but within the Housing Priority Area of DDD include the following:

DD/C-3-C

American Federation of Labor
Asbury United Methodist Church

DD/C-2-C

Fletcher Chapel (Church of God and Saints of Christ)
Moran Building (restored prior to the adoption of the DDD)
Myrens Apartments
Old Engine Company # 6

Additional Historic Landmarks

It is our understanding four additional sites in the northern part of DDD will be nominated for historic landmark status, as a result of the research into a potential Mt. Vernon Square Historic District. This work was authorized by the agreements related to approval of the site for the new Convention Center north of Mt. Vernon Square. Those four buildings, if formally designated as historic landmarks, would also be subject to the rules discussed in this memorandum. This is because "historic landmark" is a defined term in the Zoning Regulations, so that the DDD zoning rules that refer to "historic landmarks" would apply.

Conclusion. We understand that the executive agencies of the District of Columbia government have been interpreting and continue to interpret the DDD historic preservation rules in a generally consistent fashion as regards properties identified in §1707.4 and individual historic landmarks outside of that geographic area. Because our firms represent the owners of several historic landmarks that are within a Housing Priority Area but are not within the area described in §1707.4, we seek your confirmation that such landmarks are also included in the intent of §1706.20 and are eligible for the housing waiver.

CONCUR:

Zoning Administrator

By: *Amanda Lowmyer*
11/4/98

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February 8, 2000

DAVID W. BRIGGS
202-828-5001

Internet Address:
dbriggs@hklaw.com

VIA FACSIMILE/HAND DELIVERY

Stephen Callcott
Historic Preservation Division
Department of Consumer and Regulatory Affairs
Government of the District of Columbia
941 N. Capitol Street, N.E., Suite 2500
Washington, D.C. 20002

Re: Request for Mayor's Agent Hearing Related to Subdivision of
Land Involving a Historic Landmark; Yale Laundry Buildings

Dear Mr. Callcott:

This firm represents the Yale Steam Limited Partnership. By this letter we request that the Historic Preservation Division schedule a Mayor's Agent hearing pursuant to the requirements of the historic Landmark and Historic District Protection Act of 1978 as amended related to the proposed subdivision of Lots 6, 67, 68, 73 and 74 in Square 514 into a single lot of record. As you are aware the District of Columbia Historic Preservation Review Board approved the proposed subdivision at the Board's November 1999 meeting.

We appreciate your assistance in this matter.

Sincerely,

HOLLAND & KNIGHT LLP



David W. Briggs

cc: Michael Minkoff

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